IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.347 OF 1993

1. Motibagh Co-operative Housing Society Limited, a Co-operative Housing Society, duly registered under the Maharashtra Co-operative Societies Act, having its office at Flat No.1, Yashodhan Apartments, 2110/8, Shivaji Nagar, Pune—411 016.
2. Shri Ashok Motilal Chordia, Chairman and shareholder of Motibagh Co-operative Housing Society Limited, of Pune, Indian Inhabitant, residing at Flat No.1, Yashodhan Apartments, 2119/8, Shivani Nagar, Pune—411 016. : Petitioners

V/s.

1. Pune Municipal Corporation, having its office at PMC Building, Shivaji Nagar, Pune—411 005.
2. City Engineer, Municipal Corporation of Pune, Pune—411 005.
3. Assistant Engineer, Town Planning, Municipal Corporation, Pune—411 005.
4. The Director of Town Planning, Maharashtra State, Pune Central Offices, Pune—411 001.
5. The State of Maharashtra and Secretary to the Ministry of Urban Devp. Department, Mantralaya, Mumbai.
6. The Collector of Pune.
7. The State of Maharashtra through its Secretary to the Ministry of Revenue, Mantralaya, Mumbai. : Respondents

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Dr.V. V. Tulzapurkar, Senior Advocate, with Mr.Mohan Pungalia and Mr.G. S. Godbole for the petitioners.

Mr.R. G. Ketkar for respondent Nos.1 to 3.

Mr.P. M. Patil, Assistant Government Pleader, for respondent Nos.4 to 7.

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WITH

WRIT PETITION NO.2890 OF 1993

Udaysinh Narayanrao Borawake,
Udaybag, Hadapsar, Pune—411 013. : Petitioner

V/s.

1. Pune Municipal Corporation,
Shivajinagar, Pune—411 005.
2. State of Maharashtra,
Mantralaya, Bombay. : Respondents

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Ms Kiran Bhagalia for the petitioner.
Mr.R. G. Ketkar for respondent No.1.
Mr.P. M. Patil, Assistant Government Pleader for respondent No.2.

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CORAM : DALVEER BHANDARI, C.J. &
S.A. BOBDE, J.

DATE OF RESERVING) : 11.4.2005
THE JUDGEMENT)

DATE OF PRONOUNCING): 3.5.2005
THE JUDGEMENT)

JUDGEMENT (Per S.A. Bobde, J.)

1. The petitioners in both these petitions are owners of land situate at Yeravada, Pune, within the limits of Pune

Municipal Corporation. Motibagh Co-operative Housing Society Limited is owner of land admeasuring 83 ares bearing survey No.152/1 and final plot No.70/3.

Udaysinh Narayanrao Borawake, the petitioner in Writ Petition No.2890 of 1993, is the owner of an adjoining piece of land admeasuring 46.304 sq. ft., bearing survey No.152/2.

2. Both the plots of lands are covered by the same Town Planning Scheme. They are in the residential zone. They are reserved for parking. The Planning Authority has changed the reservation of both these plots. That reservation has been changed for the purpose of a bus terminus of the Pune Municipal Transport Corporation. This change of reservation is challenged in these petitions. These petitions, therefore, have been taken up together for disposal by this judgement.

3. The lands belonging to the petitioners have undergone various changes in reservation. In 1966 they came under a

green zone. On 1.6.1983 the Town Planning Scheme for Pune was sanctioned under the Maharashtra Regional and Town Planning Act, 1966, hereinafter referred to as the “Act”. In the scheme, the said lands, hereinafter referred to as the “said lands”, was shown as a residential zone. On 18.9.1982 the said land was reserved for the purpose of parking in the Draft Development Plan. The petitioners inquired from the Pune Municipal Corporation as to how much area is required for parking. The Corporation wrote stating that 40 hectares of land was needed for a bus station and the rest could be used as a residential. The respondents invited objections in respect of the reservation for parking sometime in the year 1983. The petitioners submitted their objections. Udaysinh Narayanrao Borawake, the petitioner in Writ Petition No.2890 of 1993, pointed out that he has already surrendered an area of 7185 sq. ft. for the purpose of a dhobi ghat. That land was lying unutilised and suggested that it could be used for parking.

4. The petitioners in Writ Petition No.347 of 1993, which

are a co-operative society, submitted plans for development of their land and wrote to respondent No.1 that they were commencing construction. The Municipal Corporation issued a stop work notice on 6.10.1984.

5. Then came the change in reservation, which is challenged. On 5.1.1987 the State Government sanctioned the development plan under section 31 of the Act. While sanctioning this plan, the land was shown as reserved for a bus depot. Admittedly, no notice inviting objections or suggestions was issued by the respondents for a change in reservation from the purpose of parking to the purpose of a bus depot.

6. On 6.4.1992 the respondents issued a Notification under section 6 of the Land Acquisition Act read with section 126 (4) of the Act.

7. On 25.1.1993 Writ Petition No.347 of 1993 was filed whereas Writ Petition No.2890 of 1993 was filed on 27.7.1993.

By an interim order, this Court allowed the acquisition proceedings to proceed, but restrained the declaration of the award. While the petitions were pending, the co-operative housing society has surrendered an area of 3124 sq. mtrs., for road widening to respondent No.1.

8. The principal challenge of Dr.Tulzapurkar, learned counsel for the petitioners in Writ Petition No.347 of 2003 and Ms Kiran Bhagalia, learned counsel for the petitioner in Writ Petition No.2890 of 1993, is the same. According to the learned counsel, the land having been reserved for the purpose of parking in the Draft Development Plan as published in the Official Gazette, the change in its reservation for a bus depot and terminus is a modification of a substantial nature. Such a modification made while sanctioning the Draft Development Plan under section 31 could only have been made after publishing a notice of the proposed modification and after inviting objections and suggestions from those affected thereby, in accordance with the second proviso to sub-section (1) of section 31. Sub-section (1)

reads as follows:-

> "**31. Sanction to draft-Development Plan**.--(1) Subject to the provisions of this section, and not later than one year from the date of receipt of such plan from the Planning Authority, or as the case may be, from the said Officer, the State Government may, after consulting the Director of Town Planning by notification in the Official Gazette sanction the draft-Development Plan submitted to it for the whole area, or separately for any part thereof, either without modification, or subject to such modifications as it may consider proper, or return the draft-Development plan to the Planning Authority or as the case may be, the said Officer for modifying the plan as it may direct, or refuse to accord sanction and direct the Planning Authority or the said

Officer to prepare a fresh Development plan;

Provided that, the State Government may, if it thinks fit, whether the said period has expired or not, extend from time to time, by a notification in the *Official Gazette,* the period for sanctioning the draft Development plan or refusing to accord sanction thereto, by such further period as may be specified in the notification;

Provided further that, where the modifications proposed to be made by the State Government are of a substantial nature, the State Government shall publish a notice in the O*fficial Gazette* and also in local newspapers inviting objections and suggestions from any person in respect of the proposed modification within a period of sixty days from the date of such notice.

(2) .....

(3) .....

(4) .....

(5) .....

(6) .....”

9. The short question that arises, therefore, is whether the modification in question, of reservation for parking to reservation for a bus depot or terminus amounts to a modification of a substantial nature. If the answer is in the affirmative, then clearly the impugned Notification is not in accordance with law, because admittedly, in the Draft Development Plan and in the Town Planning Scheme, the said land was reserved for the purpose of parking and while sanctioning the development plan on 5.1.1987,it has been changed to reservation of a bus depot without inviting any objections or suggestions.

10. We, therefore, proceed to consider whether the modification in the reservation from the purpose of parking to a reservation for the purpose a bus terminus is one of a substantial

nature. Even though the phrase "modification of a substantial nature" existed in section 31 as originally enacted and when the development plan was sanctioned on 5.1.1987, its meaning had not been defined by the Act. This phrase was defined by the introduction of section 22A inserted by Maharashtra Act No.39 of 1994 with effect from 17.8.1994. The Statement of Objects and Reasons by which section 22A was introduced shows that the Legislature considered the earlier provision to be vague. It states that the introduction of section 22A "would eliminate any vagueness in respect of the nature of the modifications carried out to the draft development plan by the Planning Authorities....." We are of view that the phrase has been defined ex majori cautela to make things abundantly clear. It is settled law that a latter statute may be used as an aid to construction of an earlier Act, if the earlier statute is ambiguous, or readily capable of more than one interpretation, vide State of Bihar v. S. K. Roy (AIR 1966 SC 1995 at p. 1998), Thiru Manickan v. State of Tamilnadu (AIR 1977 SC 518, para 11) and Assam Sillimanite v. Union of India (AIR 1990 SC 1417 at

p. 1422). As with statutes, so with the provisions of a statute. A phrase occurring in a provision may be construed as defined by a subsequent provision enacted by the same Legislature in the same Act. More so, when it is defined in order to clarify or remove an ambiguity as in this case. We are, therefore, of view that the phrase "modification of a substantial nature" must be given the meaning as defined in section 22A even while construing its meaning under section 31 of the Act as originally enacted and even while considering modifications to the Development Plan made prior to the insertion of section 22A, vide Laxmi Engineering Works v. P. S. G. Industrial Institute (AIR 1995 S.C. 1428), where a provision added subsequently was viewed as clarificatory and was held applicable to all pending proceedings.

11. In the present case, the modification is said to be of a substantial nature because it provides for a new reservation as contemplated by clause (c) of section 22A which reads as follows:-

"**22A. Modifications of a substantial nature**.--In section 29 or 31, the expression "of a substantial nature" used in relation to the modifications made by the Planning Authority or the officer appointed by the State Government under sub-section (4) of section 21 (hereinafter referred to as "the said Officer";) or the State Government, as the case may be, in the draft Development Plan means,--

(a) reduction of more than fifty per cent, or increase by ten per cent, in area of reservations provided for in clauses (b) to (i) of section 22, in each planning unit or sector of a draft Development Plan, in sites admeasuring more than 0.4 hectare in the Municipal Corporation area and "A" Class Municipal area and 1.00 hectare "B" Class and 'C' Class Municipal areas;

(b) all changes which result in the aggregate to a reduction of any public amenity by more than ten per cent or the area provided in the planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be;

(c) reduction in an area of an actually existing site reserved for a public amenity except for marginal area upto two hundred square meters required for essential public amenity or utility services;

(d) change in the proposal of allocating the use of certain lands from the zone to any other zone provided by clause (a) of section 22 which results in increasing the area in that other zone by ten per cent, in the same planning unit or sector in a draft Development Plan prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be:

(e) any new reservation made in a draft Development Plan which is not earlier published under section 26, 29 or 31, as the case may be;

(f) alterations in the Floor Space Index beyond ten per cent, of the Floor Space Index prescribed in the Development Control Regulations prepared and published under section 26 or published with modifications under section 29 or 31, as the case may be."

12. We are clearly of view on a plain reading of clause (c) above, that the change in reservation for parking to that for a bus depot or terminus amounts to a modification of a substantial nature since it is a new reservation not earlier published under section 26, 29 or 31. Admittedly, there was no reservation for a bus terminus or a depot when the Draft Development Plan was published under section 26 and, in fact, right upto the time when the Development Plan was finally sanctioned under section 31.

13. Mr.Ketkar, learned counsel for the respondent-Corporation, however, strenuously urged that the reservation for a bus depot or terminus cannot be construed to be a new

reservation and, therefore, a modification for that purpose cannot be considered to be one of a substantial nature under section 22A. According to the learned counsel, it cannot be construed to be a new reservation because there was already an existing reservation. We are unable to accept this contention. The contention suffers from the fallacy of confusing `new' with `fresh' i.e., as if for the first time. It is clear that the phrase “new reservation” has been used as opposed to an “old” or “existing reservation”. If the contention on behalf of the respondents were to be accepted, it would mean that a modification of a substantial nature would only mean a “fresh reservation” i.e., one made where the land had not been reserved at all for any purpose. In fact, section 31, section 22A and related provisions deal with “modifications” or “changes” and not with something done for the first time.

14. A judgement of a learned single Judge of this Court in Bombay Environmental Action Group & anr., reported in 1990 Mh. L.J. 139 was brought to our notice. In that case, the learned

single Judge has held that modification cannot be considered to be of a substantial nature unless it affects the totality of plan or a significant part thereof. That judgment was rendered when the Act had not been amended to define the term "modification of a substantial nature". Section 22A containing clause (e), supra, had not been introduced. More over, even *de hors* section 22A, the phrase "modification of a substantial nature" does not refer merely to a quantitative modification in the sense of a significant part of the plan. It is also referable to a qualitative change in the reservation which affects the rights of the land owner and of those living in the vicinity. In the present case, it is clear that the change in reservation from the purpose of parking to the purpose of a bus depot or terminus would have an impact on the life-style of those living in the vicinity, and the ecology and the environment of the area. Qua the owners, it certainly has an impact, having regard to the Development Control Rules framed by the Pune Municipal Corporation. If the area is reserved for parking, the owners can potentially develop and retain part of the land for themselves.

15. Ms Bhagalia, learned counsel for the petitioner in Writ Petition No.2890 of 1993 referred to the fact that under the Development Control Rules, if a site was designated for parking, an owner was required to surrender 50% of the land merged in the road area to be utilised for parking free of cost to the Corporation. On such surrender, he was entitled to avail the benefit of additional FSI in lieu of the surrendered area. This was the position as on 5.1.1987 under the amended regulations. Thereafter, on 5.6.1997 when the development plan was sanctioned, if the site is reserved for parking, the Municipal Corporation had the option to (i) acquire, develop, operate and maintain the parking zone; or (b) allow the owner to develop the parking lot in accordance with the specification as prescribed by the Commissioner and thereupon utilise the full built-up area equal to the FSI available on the plot for the purpose of providing a parking space. Admittedly, if the land is reserved for a bus depot, there is no provision whereby the Corporation may offer or the owner may seek, the right to utilise the FSI available on such

a plot. This fortifies the view that the modification of the reservation from the purpose of parking to the purpose of a bus depot or terminus is a modification of a substantial nature within the meaning of section 31 of the Act.

16. In this view of the matter, the modification having been effected without inviting any objections or suggestions in the Official Gazette as required by the 2nd proviso to section 31 of the Act, is illegal. We, therefore, make the rule absolute and quash and set aside the Government Resolution dated 5.1.1987 issued by the State of Maharashtra at exh.` V to Writ Petition No.347 of 1993, insofar as it seeks to reserve the said land of the petitioners in both the Writ Petitions for the alleged public purpose of PMC bus depot as shown in the Development Plan of Pune city.

Sd/-

CHIEF JUSTICE

Sd/-

S.A. BOBDE, J.